

## Department of Veterans Affairs

## § 21.6052

§ 21.6005(c) of this part who seeks to become a program participant provided VA first determines the veteran has good potential for achieving employment. Failure to choose to participate in an evaluation shall have no adverse effect upon the veteran's continued receipt of pension under § 3.342 of this chapter.

(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100-687)

(c) *Notice to eligible veteran.* (1) A qualified veteran under age 45 awarded pension during the program period for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded pension. The notice will inform the veteran of the provisions of this temporary program, the conditions under which participation in an evaluation is required, and the consequences of non-participation.

(2) A qualified veteran age 45 or older awarded pension during the program period will be informed of the provisions of this temporary program and the procedure for requesting an evaluation.

(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687, Pub. L. 101-237)

(d) *Scheduling the evaluation.* (1) An evaluation will be arranged as promptly as practicable for each qualified veteran:

(i) Under age 50 who is sent the notice required under paragraph (c)(1) of this section; and

(ii) [Reserved]

(2) Other qualified veterans identified in § 21.6005(c) who are found to have good employment potential under § 21.6054.

(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687)

(e) *Followup of qualified veterans who do not complete an evaluation.* The case of each qualified veteran under age 45 awarded pension during the program period for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation

and Employment (VR&C) staff as provided in §§ 21.197(c)(4) and 21.198(d).

(Authority: 38 U.S.C. 1524(a); Pub. L. 100-687, Pub. L. 101-237)

(f) *Limitation on the number of evaluations.* Notwithstanding the provisions of paragraphs (a) through (e) of this section, the number of evaluations which may be provided under this temporary program is subject to the limitations contained in § 21.6059 of this part.

(Authority: 38 U.S.C. 1524(a)(3))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990; 56 FR 21448, May 9, 1991]

### § 21.6052 Evaluations.

(a) *Scope and nature of evaluation.* The scope and nature of the evaluation under this program shall be the same as for an evaluation of the reasonable feasibility of achieving a vocational goal under the procedures described for chapter 31 benefits. *See § 21.50(b)(5) and § 21.53 (d) and (f).*

(Authority: 38 U.S.C. 1524(a)(1)(2))

(b) *Specific services which may be provided in the course of evaluation in determining the reasonable feasibility of achieving a vocational goal.* The following specific services may be provided as a part of the evaluation of reasonable feasibility of achieving a vocational goal, as appropriate:

(1) Assessment of feasibility by a counseling psychologist;

(2) Review of feasibility assessment and of need for special services by the Vocational Rehabilitation Panel;

(3) Provision of medical and other diagnostic services;

(4) Evaluation of employability, for a period not to exceed 30 days, by professional staff of an educational or rehabilitation facility.

(Authority: 38 U.S.C. 1524(b))

(c) *Responsibility for evaluation.* All determinations as to the reasonable feasibility of vocational training and entitlement to assistance under 38 U.S.C. 1524 shall be made by a counseling psychologist in the Vocational

## § 21.6054

## 38 CFR Ch. I (7–1–03 Edition)

Rehabilitation and Employment Division.

(Authority: 38 U.S.C. 1524(b))

### § 21.6054 Criteria for determining good employment potential.

(a) *Determining good employment potential.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under § 21.6005(c)(2), VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. This determination shall be made on the basis of the information of record, including information submitted by the veteran at the time of the veteran's request to participate in this temporary program.

(Authority: 38 U.S.C. 1524(a)(2); Pub. L. 100-687).

(b) *Criteria.* The criteria contained in paragraphs (c) and (d) of this section are to be applied by Vocational Rehabilitation and Employment professional staff members to determine whether information of record supports a determination that a veteran age 50 or older has good potential for employment. Any reasonable doubt shall be resolved in the veteran's favor.

(Authority: 38 U.S.C. 1524(a)(2))

(c) *Indicators of good potential for employment.* Indicators of good potential for employment include one or more of the following:

- (1) A period of stable employment prior to the onset of disability.
- (2) Strong motivation to return to the work force.
- (3) Successful pursuit of education or training.
- (4) Cooperation in treatment of disabling conditions.
- (5) Stabilization of medical conditions or substance abuse problems.
- (6) Participation in therapeutic work programs.
- (7) Evidence of recent sustained job-seeking.

(Authority: 38 U.S.C. 1524(b)(1))

(d) *Contraindications of good potential for employment.* Contraindications of

good potential for employment include one or more of the following:

- (1) A lifelong history of unstable employment with long periods of employment before the onset of disability.
- (2) Being out of the labor market for five years or more preceding the evaluation.
- (3) Unsuccessful pursuit of education or training.
- (4) Noncooperation in the treatment of disability.
- (5) Need for an additional period of medical care or treatment before training would be feasible.
- (6) Nonparticipation in prescribed or recommended therapeutic work programs.
- (7) Failure of previous vocational rehabilitation programs to achieve employability.

(Authority: 38 U.S.C. 1524(a)(2))

(e) *Negative determinations.* If VA does not find good employment potential, VA will notify the veteran that he or she is not eligible to receive an evaluation. Since this finding will preclude program participation, the veteran will be informed of his or her appellate rights as described in § 21.59 of this part.

(1) If the determination cannot be made on the evidence of record, VA shall advise the veteran and may provide him or her with an opportunity to submit additional information within a reasonable time.

(2) A veteran's disagreement with a negative finding shall be considered evidence of motivation for employment, and may, when considered in relation to other information, provide a basis for finding that good employment potential exists;

(3) If the final VA determination, following a review of a contested negative finding, is that good potential for achieving employment does not exist, a personal interview will be scheduled, and the reasons for VA's determination shall be discussed with the veteran.

(Authority: 38 U.S.C. 1524(a)(2))

[53 FR 4397, Feb. 16, 1988, as amended at 55 FR 17272, Apr. 24, 1990]